IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 83 OF 2003

MR. COSME COUTINHO(DEC) THROUGH L.RS., ...Appellants

Versus

MR. LINO D'SOUZA(DEC) THROUGH L.RS., ...Respondents

MRS.A.A.AGNI,

Coram:- A.M.KHANWILKAR, J.

Date:- 21st November, 2003

P.C.:

Heard both sides.

2. Learned counsel for the appellants contends that having regard to the facts and circumstances of the case, questions articulated at (a) to (d), (f) and (h) would arise for consideration which are substantial questions of law. However, in my view the learned counsel for the respondents, rightly contends that none of these questions would arise for consideration because the Appellate Court has, after considering all the circumstances on record, in particular paras 12 to 14, of the impugned judgment has found as a fact that the transaction was one of lease and not of licence. It is not possible to suggest that the finding so reached is perverse or unsustainable either on facts or in law.

If that is so, the questions as formulated in the Memo of Appeal on behalf of the Appellants willnot arise for consideration because those questions proceed on the premise that the transaction was one of licence and was permissible by the extent provisions applicable to the parties at the relevant time.

3. In my opinion therefore this Appeal deserves to be dismissed.

4. Learned counsel for the Appellants however submits that the Appellate Court has misconstrued the document (Exh.D1/P.w1) dated 30th July, 1981. However, I find no substance in this submission because the Appellate Court has examined the said document and has formed its opinion which, in my view needs no interference. Hence not a case for interference. Rejected.

A.M.KHANWILKAR, J.